

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 19, 2008 appellant, then a 35-year-old police officer, filed a traumatic claim (Form CA-1) for neck and back injuries sustained in an October 11, 2008 motor vehicle accident while driving home after his patrol shift. Immediately following the accident, he was taken to a hospital emergency room for evaluation and treatment. Appellant stopped work on October 11, 2008.

In an October 30, 2008 letter, OWCP advised appellant of the evidence needed to establish his claim, including factual evidence supporting that the accident occurred in the performance of duty and medical evidence of any diagnosed injuries and their relationship to the accident. It afforded him 30 days in which to submit such evidence. Appellant did not submit any additional evidence.

By decision dated December 5, 2008, OWCP denied appellant's claim on the grounds that there was insufficient evidence to establish that the claimed injuries occurred in the performance of duty.

In a November 28, 2009 letter, appellant requested reconsideration. He submitted a statement and those of two supervisors noting that he was in an overtime pay status at the time of the October 19, 2008 accident. In a December 22, 2008 letter, Supervisor S.J. stated that appellant was at the location of the accident solely because of a "patrol assignment which he was called in to do on his day off." In a December 13, 2010 letter, C.M. Wilkerson, a chiropractor, noted that appellant reached maximum medical improvement on December 24, 2008 and did not need further treatment.

By decision dated January 4, 2011, OWCP affirmed as modified its December 5, 2008 decision. It found that appellant established that the October 11, 2008 motor vehicle accident occurred in the performance of duty. However, appellant did not submit medical evidence to establish a neck or back injury related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

ANALYSIS

OWCP accepted that appellant was in a employment-related motor vehicle accident on October 11, 2008. The employing establishment confirmed his account of the accident and that he was in the performance of duty. OWCP accepted the accident as work related.⁶ In order to establish his claim, appellant must also submit sufficient medical evidence to establish that the accepted accident caused an injury. The Board finds, however, that he did not submit such evidence.

Appellant submitted a December 13, 2010 letter from Dr. Wilkerson, a chiropractor, releasing her from treatment as of December 24, 2008. Dr. Wilkerson did not provide any diagnosis. As noted, exposure to a workplace incident does not entitle an employee to medical treatment under FECA unless the employee has sustained an identifiable injury or medical condition as a result of that incident.⁷ In this case, there is no identifiable injury or condition that appellant sustained.⁸ Dr. Wilkerson is not a physician as defined under FECA for the purposes of this case. Under section 8101(2) of FECA, the term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁹ As Dr. Wilkerson did not diagnose a spinal subluxation by x-ray, he is not a physician and his opinion is of no probative medical value.

The Board notes that OWCP advised appellant by an October 30, 2008 letter of the necessity of submitting rationalized medical evidence to support a causal relationship between the October 11, 2008 accident and his claimed back and neck injury; but appellant did not submit any such evidence. The Board finds that appellant has not established that he sustained an injury due to the October 11, 2008 motor vehicle accident.¹⁰

⁴ Gary J. Watling, 52 ECAB 278 (2001).

⁵ Deborah L. Beatty, 54 ECAB 340 (2003).

⁶ Gary J. Watling, *supra* note 4.

⁷ 20 C.F.R. § 10.303(a).

⁸ J.F., Docket No. 09-1061 (issued November 17, 2009).

⁹ 5 U.S.C. § 8101(2). George E. Williams, 44 ECAB 530 (1993).

¹⁰ Guiseppe Aversa, 55 ECAB 164 (2003).

On appeal, counsel asserts that OWCP's January 4, 2011 decision was contrary to fact and law. As noted, appellant submitted insufficient medical evidence to establish that he sustained a neck or back injury due to the accepted October 11, 2008 motor vehicle accident.

CONCLUSION

The Board finds that appellant did not establish that he sustained neck and back injuries in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 4, 2011 is affirmed.

Issued: November 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board